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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No.

2010-149

13 **KENNETH LEON NOLAN**
37311 Fullmoon Street
Palmdale, CA 93550

A C C U S A T I O N

14 **Registered Nurse License No. 483378**

15 Respondent.

16
17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
19 official capacity as the Interim Executive Officer of the Board of Registered Nursing ("Board"),
20 Department of Consumer Affairs.

21 2. On or about August 31, 1992, the Board issued Registered Nurse License Number
22 483378 to Kenneth Leon Nolan ("Respondent"). Respondent's registered nurse license was in
23 full force and effect at all times relevant to the charges brought herein. The license will expire on
24 February 28, 2010, unless renewed.

25 **STATUTORY PROVISIONS**

26 3. Code section 118, subdivision (b), provides, in pertinent part, that the suspension,
27 expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to
28 proceed with a disciplinary action during the period within which the license may be renewed,

1 restored, reissued or reinstated.

2 4. Business and Professions Code ("Code") section 2750 provides, in pertinent part, that
3 the Board may discipline any licensee, including a licensee holding a temporary or an inactive
4 license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing
5 Practice Act.

6 5. Code section 2764 provides, in pertinent part, that the expiration of a license shall not
7 deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or
8 to render a decision imposing discipline on the license. Under Code section 2811, subdivision
9 (b), the Board may renew an expired license at any time within eight years after the expiration.

10 6. Code section 2761 states, in pertinent part:

11 The board may take disciplinary action against a certified or licensed
12 nurse or deny an application for a certificate or license for any of the following:

13 (a) Unprofessional conduct . . .

14

15 (d) Violating or attempting to violate, directly or indirectly, or assisting
16 in or abetting the violating of, or conspiring to violate any provision or term of this
chapter [the Nursing Practice Act] or regulations adopted pursuant to it.

17

18 (f) Conviction of a felony or of any offense substantially related to the
19 qualifications, functions, and duties of a registered nurse, in which event the record of
the conviction shall be conclusive evidence thereof . . .

20 7. Code section 2762 states, in pertinent part:

21 In addition to other acts constituting unprofessional conduct within the
22 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a
person licensed under this chapter to do any of the following:

23 (a) Obtain or possess in violation of law, or prescribe, or except as
24 directed by a licensed physician and surgeon, dentist, or podiatrist administer to
himself or herself, or furnish or administer to another, any controlled substance as
25 defined in Division 10 (commencing with Section 11000) of the Health and Safety
Code or any dangerous drug or dangerous device as defined in Section 4022.

26

27 (c) Be convicted of a criminal offense involving the prescription,
28 consumption, or self administration of any of the substances described in subdivisions
(a) and (b) of this section, or the possession of, or falsification of a record pertaining

1 to, the substances described in subdivision (a) of this section, in which event the
2 record of the conviction is conclusive evidence thereof . . .

3 8. Code section 2765 states:

4 A plea or verdict of guilty or a conviction following a plea of nolo
5 contendere made to a charge substantially related to the qualifications, functions and
6 duties of a registered nurse is deemed to be a conviction within the meaning of this
7 article. The board may order the license or certificate suspended or revoked, or may
8 decline to issue a license or certificate, when the time for appeal has elapsed, or the
9 judgment of conviction has been affirmed on appeal or when an order granting
10 probation is made suspending the imposition of sentence, irrespective of a subsequent
11 order under the provisions of Section 1203.4 of the Penal Code allowing such person
12 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
13 the verdict of guilty, or dismissing the accusation, information or indictment.

14 9. Code section 4324, subdivision (a), states:

15 Every person who signs the name of another, or of a fictitious person, or
16 falsely makes, alters, forges, utters, publishes, passes, or attempts to pass, as genuine,
17 any prescription for any drugs is guilty of forgery and upon conviction thereof shall
18 be punished by imprisonment in the state prison, or by imprisonment in the county
19 jail for not more than one year.

20 10. Code section 490, subdivision (a), states:

21 In addition to any other action that a board is permitted to take against a
22 licensee, a board may suspend or revoke a license on the ground that the licensee has
23 been convicted of a crime, if the crime is substantially related to the qualifications,
24 functions, or duties of the business or profession for which the license was issued.

25 11. Health and Safety Code section 11170 states that no person shall prescribe,
26 administer, or furnish a controlled substance for himself.

27 12. Health and Safety Code section 11173, subdivision (a), states, in pertinent part:

28 No person shall obtain or attempt to obtain controlled substances, or
procure or attempt to procure the administration of or prescription for controlled
substances, (1) by fraud, deceit, misrepresentation, or subterfuge . . .

COST RECOVERY

13. Code section 125.3 provides, in pertinent part, that the Board may request the
administrative law judge to direct a licensee found to have committed a violation or violations of
the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
enforcement of the case.

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1 subdivision (c), in that on or about April 26, 2006, Respondent was convicted of a criminal
2 offense involving the prescription of a controlled substance, as set forth in paragraph 15 above.

3 **FOURTH CAUSE FOR DISCIPLINE**

4 **(Attempt to Obtain a Controlled Substance)**


5 18. Respondent is subject to disciplinary action pursuant to Code section 2761,
6 subdivision (d), in that on or about October 25, 2005, Respondent attempted to obtain the
7 controlled substance Norco by fraud, deceit, misrepresentation, or subterfuge, in violation of
8 Code sections 2761, subdivision (a), and 2762, subdivision (a), and Health and Safety Code
9 section 11173, subdivision (a), as set forth in paragraph 15 above.

10 **PRAYER**

11 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
12 and that following the hearing, the Board of Registered Nursing issue a decision:

- 13 1. Revoking or suspending Registered Nurse License Number 483378, issued to
14 Kenneth Leon Nolan;
- 15 2. Ordering Kenneth Leon Nolan to pay the Board of Registered Nursing the reasonable
16 costs of the investigation and enforcement of this case, pursuant to Business and Professions
17 Code section 125.3; and,
- 18 3. Taking such other and further action as deemed necessary and proper.

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20 DATED: 9/15/09


LOUISE R. BAILEY, M.Ed., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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